

JON D. MEER (State Bar No. 144389)
jmeer@seyfarth.com
SIMON L. YANG (State Bar No. 260286)
syang@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, 35th Floor
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

LORIE E. ALMON (*admitted pro hac vice*)
lalmon@seyfarth.com
SEYFARTH SHAW LLP
620 Eighth Avenue, 32nd Floor
New York, New York 10018
Telephone: (212) 218-5500
Facsimile: (212) 218-5526

Attorneys for Defendant
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DOMINIQUE OSBORNE, on her own
behalf on behalf of a class of similarly
situated persons pursuant to F.R.C.P.
23 and 23 U.S.C. § 216, and on behalf of
the General Public,

Plaintiffs,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a New
Jersey Corporation,

Defendant.

Case No. 2:10-CV-02465 JFW (CWx)

The Hon. John F. Walter

**DECLARATION OF JON D. MEER
IN SUPPORT OF DEFENDANT
PRUDENTIAL INSURANCE
COMPANY OF AMERICA, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

Date: December 6, 2010
Time: 1:30 p.m.
Courtroom: 16

Complaint Filed: April 5, 2010
Discovery Cutoff: March 1, 2011
Motion Cutoff: March 28, 2011
Pre-Trial Conf.: May 6, 2011
Trial Date: May 24, 2011

1 I, JON D. MEER, declare and state as follows:

2 1. I have personal knowledge of the facts contained in this declaration,
3 and if called as a witness, I could and would testify as to their accuracy.

4 2. I am an attorney licensed to practice law in the State of California, and
5 I am admitted to appear before this Court. I am a partner in the law firm of
6 Seyfarth Shaw LLP in Los Angeles, California, and I am the attorney with primary
7 responsibility for representing Prudential Insurance Company of America, Inc.
8 ("Prudential" or "Defendant") in the above-captioned matter, filed by Plaintiff
9 Dominique Osborne ("Plaintiff"). True and correct copies of all of the pleadings,
10 records and transcripts in this matter are maintained in my office, in the ordinary
11 course of business, under my direction and control.

12 3. I took the deposition of Plaintiff on July 6, 2009. Thereafter, I
13 ordered an original, certified copy and mini-transcript of the deposition from the
14 certified shorthand reporter.

15 4. I prepared Defendant's Motion for Summary Judgment based on
16 Plaintiff's deposition testimony. I have underlined the deposition testimony cited
17 in the motion. Excerpts of Plaintiff's deposition testimony and exhibits cited in
18 Defendant's motion are attached hereto as Exhibit "A" and incorporated herein by
19 this reference.

20 5. A true and correct copy of the full single-sided mini-transcript of
21 Plaintiff's deposition will be submitted to Chambers, along with the courtesy
22 copies of Defendant's moving papers.

23 I declare under penalty of perjury under the laws of the State of California
24 and the United States of America that the foregoing is true and correct based on my
25 own personal knowledge.

26 Executed this 8th day of November, 2010 in Los Angeles, California.

27 
28 JON D. MEER

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOMINIQUE OSBORNE, on her own)
behalf and on behalf of a)
class of similarly situated)
persons pursuant to F.R.C.P.)
23 and 23 U.S.C. 216, and on)
behalf of the General Public,)
)
Plaintiffs,)
)
vs.) No. CV10-2465 JFW (CWx)
)
THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA, a New)
Jersey Corporation,)
)
Defendant.)
_____)

VIDEOTAPED DEPOSITION OF
DOMINIQUE OSBORNE
Los Angeles, California
Tuesday, July 6, 2010

Reported by:
ANDREA M. RINKER
CSR No. 13437
JOB No. 9316R

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3
4 DOMINIQUE OSBORNE, on her own)
behalf and on behalf of a)
5 class of similarly situated)
persons pursuant to F.R.C.P.)
6 23 and 23 U.S.C. 216, and on)
behalf of the General Public,)

7)
8 Plaintiffs,)

9 vs.)

No. CV10-2465 JFW (CWx)

10 THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA, a New)
Jersey Corporation,)

11)
12 Defendant.)
_____)

13
14
15 Deposition of DOMINIQUE OSBORNE, taken
16 on behalf of Defendants, at 2029 Century
17 Park East, 35th Floor, Los Angeles,
18 California, beginning at 10:47 a.m. and
19 ending at 6:42 p.m. on Tuesday, July 6,
20 2010, before ANDREA M. RINKER, Certified
21 Shorthand Reporter No. 13437.
22
23
24
25

1 APPEARANCES:

2
3 For Plaintiffs:

4 TEEPLE HALL LLP
5 BY: JASON N. BLACK
6 Attorney at Law
7 9225 Towne Centre Drive, Suite 500
8 San Diego, California 92121
9 (858) 622-7878

10 For Defendant:

11 SEYFARTH SHAW
12 BY: JON D. MEER
13 BY: SIMON L. YANG
14 Attorneys at Law
15 2029 Century Park East, 35th Floor
16 Los Angeles, California 90067
17 (310) 277-7200

18 Videographer:

19 CHUCK PERRY
20 M&M COURT REPORTERS
21 501 North Golden Circle Drive, Suite 106
22 Santa Ana, California 92705
23 (714) 972-2300

24 Also Present:

25 RICO LAGATTULA

1 understand that?

2 A Yes.

3 Q Have you taken any medication or alcohol or
4 anything that might affect your ability to concentrate
10:53 5 and provide your most truthful, most accurate testimony?

6 A No, I haven't.

7 Q Do you know of any reason why you might be
8 physically or mentally unable to concentrate and provide
9 your best and most accurate and most truthful testimony?

10:54 10 A No.

11 Q You were employed by Prudential Insurance
12 Company in 2008 and 2009, right?

13 MR. BLACK: Objection. Assumes facts not in
14 evidence.

10:54 15 BY MR. MEER:

16 Q Please answer.

17 MR. BLACK: You can answer.

18 THE WITNESS: Yes. That's correct.

19 BY MR. MEER:

10:54 20 Q You started work on August 21st, 2008 and your
21 employment ended on -- to July 17th, 2009, correct?

22 A I want to say it was before August 21st, but it
23 was in August.

24 Q August 2008, right?

10:54 25 A Yes. That's correct.

Exhibit A, Page 5

1 Q And your employment ended on July 17th, 2009,
2 right?

3 A I'm not sure of the exact date, but I know it
4 was in July.

10:55 5 Q And during the time that you were working for
6 Prudential, you worked at their Agoura Hills location,
7 correct?

8 A Yes. That's correct.

9 Q You never worked at any other location of the
10:55 10 company, right?

11 A No, I didn't.

12 Q And when you performed the work that you
13 performed at Prudential, you worked inside the Agoura
14 Hills office, right?

10:55 15 A Yes. That's right.

16 Q You didn't have an arrangement where you were
17 allowed to work at home or from some offsite location,
18 right?

19 A No, I didn't.

10:56 20 (Interruption in the proceedings.)

21 BY MR. MEER:

22 Q And the Agoura Hills location where you worked
23 was part of a suburban office park setting, right?

24 A Yes. That's correct.

10:56 25 Q And to start your workday, you parked at the

1 BY MR. MEER:

2 Q When you received training working at
3 Prudential, you were told what the length of your regular
4 shift would be, right?

11:07 5 A Yes.

6 MR. BLACK: Same objection.

7 THE WITNESS: Yes.

8 BY MR. MEER:

9 Q And the shift when you were working at the
11:07 10 company began at 8:00 a.m. and ended at 4:00 p.m.,
11 correct?

12 MR. BLACK: Objection. Assumes facts not in
13 evidence.

14 THE WITNESS: Yes.

11:07 15 BY MR. MEER:

16 Q And that time from 8:00 a.m. to 4:00 p.m. was
17 automatically recorded in the company's electronic
18 records without you having to record it on your own time
19 card, right?

11:08 20 A I'm sorry. Can you repeat that again?

21 Q Sure. The shift starting and stopping time --
22 8:00 a.m. to 4:00 p.m. -- that was automatically recorded
23 by the company without you having to punch a time clock
24 or fill out a time card, right?

11:08 25 A Yes. That's correct.

Exhibit A, Page 7

1 Q And as part of your regular shift from 8:00 a.m.
2 to 4:00 p.m., you received a 30-minute lunch break,
3 correct?

4 MR. BLACK: Objection. Vague and ambiguous as
11:08 5 to "received."

6 THE WITNESS: Yes. That's correct.

7 BY MR. MEER:

8 Q You took 30 minutes for lunch every day, right?

9 MR. BLACK: Objection. Vague and ambiguous.
11:08 10 Overbroad. Vague as to time.

11 THE WITNESS: Yes. That's correct.

12 BY MR. MEER:

13 Q And so as part of your regular work shift from
14 8:00 a.m. to 4:00 p.m., you had 30 minutes of an unpaid
11:08 15 lunch and the remaining seven and a half hours were paid,
16 correct?

17 MR. BLACK: Objection. Vague and ambiguous as
18 to "paid." Overbroad. Compound.

19 Do you understand the question?

11:09 20 THE WITNESS: Yes, yes. Yes, that's correct.

21 BY MR. MEER:

22 Q And also during your regular shift, you received
23 breaks, correct?

24 MR. BLACK: Objection. Vague and ambiguous as
11:09 25 to "breaks." Overbroad.

1 THE WITNESS: Yes. That's correct.

2 BY MR. MEER:

3 Q There were two ten-minute breaks that you were
4 allowed to take every day, correct?

11:09 5 A Yes. That's correct.

6 Q And there was a third block of ten minutes where
7 you were allowed to do whatever you wanted and not have
8 to perform work activities, correct?

9 MR. BLACK: Objection. Assumes facts not in
11:09 10 evidence. Vague and ambiguous. Leading. Overbroad.
11 Compound.

12 THE WITNESS: Yes, if you needed, for example,
13 to use the rest room.

14 BY MR. MEER:

11:09 15 Q And so you understood during the time that you
16 worked at Prudential you were responsible for seven hours
17 of performing work each day, you had three breaks
18 totalling 30 minutes and one lunch period totalling
19 30 minutes, correct?

11:10 20 MR. BLACK: Objection. Calls for a legal
21 conclusion. Misstates prior testimony. Vague and
22 ambiguous.

23 THE WITNESS: Well, really -- it wasn't fully an
24 hour unless you did have to use the bathroom. So really,
11:10 25 I guess with the -- the ten minutes extra or what have

1 you -- I mean, it was just used if you needed to use it,
2 but not always every single day.

3 BY MR. MEER:

4 Q No one ever prohibited you from taking three
11:10 5 ten-minute breaks, right?

6 MR. BLACK: Objection. Misstates prior
7 testimony. Assumes facts not in evidence. Vague and
8 ambiguous as to "three ten-minute breaks."

9 THE WITNESS: We were never offered like it was
11:11 10 offered and put out there three minute -- ten-minute
11 breaks. That wasn't something I did. If you had to use
12 the bathroom you just use the bathroom. But
13 realistically, I wasn't always in the bathroom for ten
14 minutes each day.

11:11 15 BY MR. MEER:

16 Q You were told that you would have two ten-minute
17 breaks during each workday, correct?

18 A Yes. That's correct.

19 Q And you were always allowed to take two ten-
11:11 20 minute breaks each workday, right?

21 A Yes, I was.

22 Q And the third ten-minute break was something
23 that you took on an ad hoc basis if you needed to use the
24 rest room or get a cup of coffee or leave your
11:11 25 workstation, correct?

1 or not they did, you can answer the question. But in a
2 deposition, only what you know of your own personal
3 knowledge -- what you saw, heard, touched, smelled.

4 So do you know what type of training other
11:20 5 employees received at your call center location about
6 when to arrive at work and when to leave?

7 A Only from what I heard them say. I didn't
8 witness them being instructed by management of when to
9 come in, only from what they may have told me personally.

11:21 10 Q Did any employees at the call center where you
11 worked tell you that they had received a written policy
12 about when to arrive at work and when to leave work?

13 A No.

14 Q And at the call center where you worked, there
11:21 15 were approximately 14 hourly employees?

16 MR. BLACK: Objection. Vague and ambiguous.
17 Vague as to "hourly employees." Calls for a legal
18 opinion.

19 THE WITNESS: Well, there was more than 14
11:21 20 employees that worked in the call center. There was
21 other people that did different things that were not
22 all -- not everyone was on the phone.

23 BY MR. MEER:

24 Q With respect to the call center where you
11:21 25 worked, how many employees can you estimate worked there

1 BY MR. MEER:

2 Q You did your best to keep an accurate log,
3 right?

4 MR. BLACK: Objection. Misstates prior
11:25 5 testimony.

6 THE WITNESS: Yes.

7 BY MR. MEER:

8 Q And nobody told you to record your time
9 inaccurately, right?

11:25 10 A Well, sometimes people would say you may have to
11 go ahead and put down something. We would, say, like
12 fudge the numbers on there because you may -- because it
13 was almost impossible to keep track of what you did for a
14 whole seven hours or what have you being there all day.
11:26 15 So sometimes you would have to go ahead and be -- think
16 about like okay, well, I got 15 minutes I got to account
17 for and really didn't -- you couldn't remember what to
18 put there. So you may have to go ahead -- it was kind of
19 like rob Peter to pay Paul to go ahead and -- to put
11:26 20 everything in the system -- in the access system.

21 Q But when you recorded the total amount of time
22 you worked on a particular day --

23 A Mm-hmm.

24 Q -- that was always accurate, correct?

11:26 25 MR. BLACK: Objection. Calls for a legal

1 conclusion. Vague and ambiguous.

2 THE WITNESS: I would say yes.

3 BY MR. MEER:

4 Q And from what you observed from other employees
11:27 5 at the call center location in Agoura Hills, they also
6 made their best efforts to accurately record the amount
7 of time that they spent on various work activities,
8 right?

9 MR. BLACK: Objection. Calls for speculation.
11:27 10 Vague and ambiguous as to record time.

11 THE WITNESS: I would say yes.

12 BY MR. MEER:

13 Q And you knew that it was a policy of the call
14 center where you worked to accurately record the amount
11:27 15 of time that you worked each day, right?

16 MR. BLACK: Objection. Calls for a legal
17 conclusion. Misstates prior testimony. Vague and
18 ambiguous. Confusing. Intentionally confusing.
19 Compound.

11:27 20 THE WITNESS: Well, when I first started at
21 Prudential, I didn't even use the system that you're
22 describing, the access system until probably like four or
23 five months after being there. So I -- so no -- so when
24 we started doing it and getting used to it, it was --
11:28 25 because it was a very tedious -- not a user-friendly

1 Q And the overtime that was requested was for
2 people at your level who had already been trained, right?

3 A I -- I was never offered overtime even after
4 training because they told me I wasn't -- wasn't at the
11:42 5 production level that they needed to get the claims out.

6 Q You didn't want to work overtime as well,
7 correct?

8 A Yes. That's correct.

9 Q So if overtime had been offered to you and it
11:42 10 was voluntary, you would have declined?

11 MR. BLACK: Objection. Calls for speculation.

12 THE WITNESS: Yes. That's correct. I would
13 have declined.

14 BY MR. MEER:

11:42 15 Q You saw that other people at the call center did
16 work overtime, correct?

17 A Yes. That's correct.

18 Q And that for most of the weeks when you worked
19 at the Agoura Hills call center, the majority of
11:42 20 employees from what you observed worked some overtime,
21 correct?

22 MR. BLACK: Objection. Calls for a legal
23 conclusion.

24 THE WITNESS: Yes. That's correct.

11:43 25 BY MR. MEER:

1 handling calls, right?

2 A Yes.

3 Q And some people were assigned to the activity of
4 handling claims, correct?

11:45 5 A Well, yes. There was people that -- that
6 strictly were just doing claims, but you can also be on
7 the phone working because we were always having to
8 multi-task and work on claims as well.

9 Q I understand.

11:46 10 A Okay.

11 Q But there were some people who didn't wear a
12 headset during some part of the day and they only worked
13 on claims and didn't take any calls, right?

14 MR. BLACK: Objection. Misstates prior
11:46 15 testimony. Vague and ambiguous and misleading.

16 THE WITNESS: Yes. That's correct.

17 BY MR. MEER:

18 Q And there were some people who also during some
19 part of the day handled administrative issues, paperwork,
11:46 20 correspondence, things like that?

21 MR. BLACK: Objection. Assumes facts not in
22 evidence.

23 THE WITNESS: Yes. That's correct.

24 BY MR. MEER:

11:46 25 Q And these activities -- just to use shorthand so

1 that we're both talking about the same thing, I'm going
2 to refer to as "handling calls," and you understand those
3 are the people who are wearing headsets and either
4 talking to callers that come in or waiting for callers
11:46 5 that come in. Is that a fair description of it?

6 A Yes.

7 Q Okay. And people who are handling claims are
8 not wearing a headset, they are handling the claims
9 process and matching up the claims with the proper
11:47 10 payments to be paid, correct?

11 MR. BLACK: Objection. Misstates prior
12 testimony. Vague and ambiguous and misleading.

13 THE WITNESS: I would have to disagree because
14 if we got busy all of a sudden, everybody who was doing
11:47 15 claims -- you could keep your headset on all day because
16 it was unpredictable because of being a call center. So
17 they could be required to jump on the phones in the
18 middle of doing a claim. So everyone was -- the job that
19 was trained to do claims was also trained to be on the
11:47 20 phone at any moment's notice.

21 BY MR. MEER:

22 Q I understand that.

23 A Okay.

24 Q I just want to --

11:47 25 A Okay.

1 Q Let me describe it like this. If I were to take
2 a snapshot of the call center -- if I were to walk in the
3 call center at 10:00 a.m. while you were working, I would
4 see some people with headsets on answering calls, right?

11:48 5 MR. BLACK: Objection. Improper hypothetical.
6 Calls for speculation.

7 THE WITNESS: Yes. That's right.

8 BY MR. MEER:

9 Q And I would see some people without headsets on
11:48 10 handling claims, right?

11 MR. BLACK: Same objection.

12 THE WITNESS: Yes. That's right.

13 BY MR. MEER:

14 Q And I would see some people without headsets on
11:48 15 handling correspondence or other paperwork, right?

16 MR. BLACK: Same objection.

17 THE WITNESS: Yes. That's right.

18 BY MR. MEER:

19 Q And those three activities were in a constant
11:48 20 state of change throughout the day depending on call
21 volume or claim volume, correct?

22 A Yes. That's correct.

23 Q So if the call volume was particularly high,
24 then more people were handling calls than if the call
11:48 25 volume was particularly low, right?

1 A Yes. That's right.

2 Q People moved from handling calls to handling
3 claims or to handling correspondence throughout the same
4 day, right?

11:49 5 A Yes. That's right.

6 Q There was a weekly schedule that was put out
7 that stated what activities somebody started on on a
8 particular day, correct?

9 A Yes. That's correct.

11:49 10 Q So when you began a workday, you knew where you
11 were starting and what activity, right?

12 A You did, but it wasn't -- it wasn't in black and
13 white. There was a lot of gray.

14 Q There was an attempt to put people in a starting
11:49 15 activity and that, from what you observed, changed
16 virtually every day, right?

17 MR. BLACK: Objection. Misstates prior
18 testimony. Vague and ambiguous.

19 THE WITNESS: Yes. It could realistically
11:49 20 change because people could get sick and that could
21 change everything with it being a small call center.

22 BY MR. MEER:

23 Q Or when some people were on their lunch who were
24 on calls, other people might have to cover calls for
11:50 25 them, right?

1 A No, I didn't, because of the pressure -- the
2 pressure and just like the -- the environment. It was
3 like being bullied to where you were afraid to really
4 ask, "Well, can I get paid if I leave at 4:07?" Because
12:15 5 it came a point where I used to complain, gosh, I never
6 get out of here on time. Even when I have a goal set and
7 I'm going to start wrapping up my stuff, I would have
8 other work thrown my way or -- and because I sat close to
9 two of the supervisors, it was like they were always
12:15 10 asking me things at the end of the day. I have claims, I
11 have QAC coming to throw things at me. So it was like I
12 was bombarded with things at the end. Even if I wanted
13 to prepare to leave, I really didn't have that option
14 unless I was just going to be like look, tell -- tell
12:15 15 management and tell everyone this will have to wait until
16 tomorrow.

17 Q I understand that you felt as if you needed to
18 stay. But on those days when you did stay past 4:00 to
19 handle claims or answer questions from quality review,
12:16 20 did you ever say to a supervisor or manager, you know, "I
21 stayed beyond my shift ending time today, how should I
22 record or am I allowed to record the extra time worked?"

23 A No. No, I didn't go ahead and push the subject.

24 Q Well, not push the subject. You never even
12:16 25 raised it, right?

1 MR. BLACK: I'm going to object that that
2 assumes facts not in evidence.

3 THE WITNESS: Yes.

4 BY MR. MEER:

01:27 5 Q Do you have any reason to believe that this
6 Exhibit 1, these building access reports are not
7 accurate?

8 MR. BLACK: Objection. Calls for a legal
9 conclusion. Calls for an expert opinion. Lacks
01:28 10 foundation.

11 THE WITNESS: I can never say 100 percent
12 accurate considering that if other people use my card or
13 I use somebody's else's card. But I was -- like we were
14 discussing earlier, I would say anywhere from 85 to
01:28 15 90 percent -- these records would most likely be 85 to
16 90 percent accurate.

17 BY MR. MEER:

18 Q Okay. If you were to look through them, would
19 you be able to spot specific days that you think are not
01:28 20 accurate?

21 A No. No. Realistically, I don't know who could
22 do that. I know I can't, so no. I wouldn't be able to
23 say which days are not accurate.

24 Q So when we look through these building access
01:29 25 records, if there is a day when you think that can't be

1 would have to say I can't 100 percent agree with the
2 times. I -- I -- I mean, because I don't have anything
3 that shows -- showed me that -- I mean -- I mean, I can
4 only trust what these reports say, but I don't know how
01:30 5 accurate they are. I don't know what the time was when I
6 badge in. There wasn't a clock there. So I don't know.
7 It could be off by five minutes or it could be -- I mean,
8 it could be later or earlier. I -- I don't know that.

9 BY MR. MEER:

01:30 10 Q Did you ever keep any separate set of records on
11 your own showing the times that you arrived at work?

12 A No, I didn't.

13 Q Okay. So we have these records.

14 A Mm-hmm.

01:31 15 Q You don't have any separate records that may
16 show different times?

17 A No, I don't. I just know that, you know, the
18 times that I roughly got to work.

19 Q As I understand your lawsuit, you're claiming
01:31 20 that you were required to come in 10 minutes before your
21 scheduled shift started at 8:00 a.m.; is that right?

22 MR. BLACK: Objection. The document speaks for
23 itself.

24 THE WITNESS: Anywhere from 10 to 15 minutes
01:31 25 early, if possible.

1 BY MR. MEER:

2 Q Looking at these records, I'll represent to you
3 that on all but four days you came in less than 10
4 minutes before your shift started. Does that seem
01:31 5 accurate to you?

6 MR. BLACK: Objection. Lacks foundation. Calls
7 for speculation. Assumes facts not in evidence.

8 THE WITNESS: It really would be speculation
9 because I don't remember exactly. I just know sometimes
01:32 10 I got there 5 minutes until, sometimes 20 minutes. The
11 times varies.

12 BY MR. MEER:

13 Q On some days you got to the office at only a
14 couple of minutes before your shift started, correct?

01:32 15 MR. BLACK: Objection. Assumes facts not in
16 evidence. Misstates prior testimony. Lacks foundation.

17 THE WITNESS: Yes. That's correct.

18 BY MR. MEER:

19 Q And on some days you got to the office after
01:32 20 your shift started, correct?

21 MR. BLACK: Objection. Also vague and ambiguous
22 as to "office."

23 THE WITNESS: Yes. Yes. That could happen as
24 well.

01:32 25 BY MR. MEER:

1 Q And on some days, you got to the office exactly
2 at the time that your shift started, correct?

3 A Yes. That's correct.

4 Q You were never given any written discipline for
01:32 5 arriving to work too late, correct?

6 A No, I wasn't.

7 MR. BLACK: Objection. Vague and ambiguous as
8 to "late."

9 THE WITNESS: No, I wasn't.

01:33 10 BY MR. MEER:

11 Q You were never given any sort of discipline
12 about the time you arrived to the office, correct?

13 A No, nothing written. It was just told verbally.

14 Q And although your complaint says that you were
01:33 15 required to be at your office 10 to 15 minutes prior to
16 8:00 a.m., on most days you first arrived at the office 4
17 or 5 minutes before 8:00 a.m., correct?

18 MR. BLACK: Objection. Lacks foundation.

19 Document speaks for itself. Improper hypothetical.

01:33 20 THE WITNESS: The policy -- Prudential's
21 policies were stressed to me by my supervisor to try to
22 get there 10 to 15 minutes early, especially days I was
23 going to be on the phone.

24 BY MR. MEER:

01:34 25 Q But despite your supervisor telling you to try

1 to be at work 10 to 15 minutes early, most of the time
2 you were only 4 or 5 minutes early, correct?

3 MR. BLACK: Objection. Asked and answered.
4 Lacks foundation. Misstates prior testimony. Documents
01:34 5 speak for themselves.

6 THE WITNESS: My intention was always to try to
7 get there as soon as I could to try to get within that
8 time frame. Realistically I wasn't able to because I
9 have children that I have to drop off. My -- my
01:34 10 daughters, I drop them off at daycare at the time. I
11 drop my son off at school. It was always in my best
12 interest to try and do what the company wanted me to do,
13 but not always did I realistically obtain that goal. It
14 was always something I wanted to do, but not always able
01:34 15 to do what they may have requested me to do.

16 BY MR. MEER:

17 Q Well, even though they may have requested you to
18 show up earlier, you were never disciplined or demoted or
19 had your pay cut or in any way counseled about the time
01:35 20 that you arrived at the office, right?

21 MR. BLACK: Objection. Asked and answered.
22 Misstates prior testimony.

23 THE WITNESS: No.

24 BY MR. MEER:

01:35 25 Q You never received any of that discipline or

1 counseling?

2 A No. No, I didn't.

3 Q And so looking at -- and we won't go through all
4 of these records. But looking at, for instance -- let's
01:35 5 go to a time after your training ended. So let's look at
6 April 27, 2009, and I'll give you the page number on
7 that. It should be page 55 of 77.

8 A Okay. Okay.

9 Q So on April 27th, for instance, you arrived
01:36 10 about two and a half minutes early, correct?

11 A Yes. That's correct.

12 Q And then going to the next day, April 28, 2009,
13 you arrived almost a minute after your shift had started.

14 A Mm-hmm.

01:36 15 MR. BLACK: Objection. Vague and ambiguous as
16 to "arrive."

17 BY MR. MEER:

18 Q Correct?

19 A Yes.

01:36 20 Q And then looking at the next day after that,
21 April 29, 2009, you arrived at work about four and a half
22 minutes before your shift started, correct?

23 A Yes. That's correct.

24 Q And then looking at the next day, April 30,
01:37 25 2009, it has your first access at 10:43:37 a.m.

1 I was working there yesterday. I would have a much
2 more -- it would be clear in my memory. But I can't tell
3 you about something from like almost a year and a half
4 ago.

01:52 5 BY MR. MEER:

6 Q Is there any day where you can remember
7 specifically what time you stopped working?

8 MR. BLACK: I'm going to object to that as to
9 specifically -- Counsel, are you asking her to --
01:53 10 specifically, or are you asking her to estimate? Do you
11 want to clarify your question?

12 BY MR. MEER:

13 Q Please answer.

14 MR. BLACK: Do you understand the question?

01:53 15 THE WITNESS: I'm sorry. Can you repeat it
16 again?

17 BY MR. MEER:

18 Q When I use the word "specifically," I mean
19 specifically. So is there any day specifically when you
01:53 20 can remember the time you stopped working?

21 MR. BLACK: Again, objection. Vague and
22 ambiguous as to whether "specifically" is being used or
23 referring to a specific day or a specific time on any
24 day.

01:53 25 THE WITNESS: No. I cannot tell you for a

1 specific day, no.

2 BY MR. MEER:

3 Q Can you tell me looking at all of these records,
4 if we were to go through day by day showing the time that
01:53 5 you logged out of the telephone queue, can you tell me
6 whether those times are accurate or inaccurate for any
7 given day?

8 MR. BLACK: Objection. Vague and ambiguous as
9 to "accurate" as to what. The question is
01:54 10 unintelligible.

11 THE WITNESS: I would say no.

12 BY MR. MEER:

13 Q So the only thing we have to go on regarding the
14 time you stopped work is your own memory, but your own
01:54 15 memory doesn't allow you to recall the times you stopped
16 working on any particular day; is that right?

17 MR. BLACK: Objection. That misstates prior
18 testimony. All you asked this witness is whether she
19 remembers specific days. You never asked her to estimate
01:54 20 generally.

21 THE WITNESS: It wasn't something that I saw
22 that I needed to keep my own personal records of. So --
23 so no. I -- what you're asking -- I just can't give you
24 the answer that you're wanting to hear.

01:55 25 BY MR. MEER:

1 THE VIDEOGRAPHER: The time is 2:38 p.m. and
2 we're off the record.

3 (Recess.)

4 THE VIDEOGRAPHER: The time is 2:46 p.m. and
02:46 5 we're back on the record.

6 BY MR. MEER:

7 Q Before we took our break, I gave you a copy of
8 Exhibit 5 which is the daily production log. Have you
9 had a chance to take a look at that?

02:47 10 A No, I haven't.

11 Q Taking a brief look at this Exhibit 5 -- it's
12 13 pages long -- is this a true and correct copy of the
13 daily production logs that you completed while at
14 Prudential?

02:47 15 A Let me go ahead and look at it. Is this only
16 for me?

17 Q Yes.

18 A It is, okay. Would you just be able to, I
19 guess, explain maybe each of the columns to me so I could
02:48 20 just make sure I'm understanding this clearly?

21 Q Sure. This is a daily production report which
22 is for your work beginning on January 2nd, 2009.

23 A Mm-hmm.

24 Q And there are different types of production --

02:48 25 A Yes.

1 Q -- different types of work done. There's
2 claims, there's telephone --

3 A Yes.

4 Q -- and then there's correspondence and there's
02:48 5 also nonproductive time, vacations, PTO time, time spent
6 in meetings. And there is a sum of production minutes
7 for each of these activities.

8 A Okay.

9 Q The 420 minutes -- if you divide 420 by 60, 60
02:49 10 minutes per hour, that comes out to be 420 minutes for
11 seven hours.

12 A Okay.

13 Q So, for instance, on January 2nd, 2009, it
14 indicated that you were doing claims production --

02:49 15 A Mm-hmm.

16 Q -- or claims work for seven hours --

17 A Mm-hmm.

18 Q -- that you completed three claims --

19 A Mm-hmm.

02:49 20 Q -- and that the percent of target is 19 percent.

21 A Mm-hmm.

22 Q Do you see that?

23 A Yes. Yes, that helps.

24 Q So then looking at this, let's look at the next
02:49 25 day, January 5.

1 A Yes. February 12, okay.

2 Q -- there's an entry for Team 800 Number Phone
3 Production. Do you see that?

4 A Yes.

02:51 5 Q And that indicates that time that you were
6 assigned to the telephones?

7 MR. BLACK: Objection. Lacks foundation.
8 Document speaks for itself. Assumes facts not in
9 evidence.

02:52 10 BY MR. MEER:

11 Q Is that what that indicates to you, Ms. Osborne?

12 A Well, let me go ahead and look at this page
13 because it does look different than the other one. Okay,
14 yeah, this does look more familiar for the things we used
02:52 15 to have to login to access, but this wasn't to logging
16 time records but strictly for production records.

17 Q Well, it also included non-production time such
18 as training time, correct?

19 MR. BLACK: Objection. Vague and ambiguous as
02:53 20 to "it."

21 THE WITNESS: Training was still tied in to
22 production time. It's just we may not have completed
23 claims or what have you.

24 BY MR. MEER:

02:53 25 Q Okay. These daily production reports were your

1 requirement to log all work-related activities?

2 A Yes. That's correct.

3 Q And just so that we're using the same codes,
4 when there's an entry for Team 800 Number Phone
02:53 5 Production, that was the entry that you made for time
6 spent handling phone calls, right?

7 A Yes. That's correct.

8 Q And where there's an entry for batched mail
9 production, that would be time spent handling
02:54 10 correspondence, right?

11 A Yes. That's correct.

12 Q And then there's a claims production entry that
13 would be time spent handling claims, right?

14 A Yes. That's right.

02:54 15 Q And then team training -- that would be either
16 one-on-one coaching or a meeting with other colleagues,
17 correct?

18 A Yes. That's correct.

19 Q Okay. And so looking at all of these dates, you
02:54 20 filled in the amount of time spent on each of these
21 different work-related activities per day, correct?

22 MR. BLACK: Objection. Document speaks for
23 itself. Lacks foundation as to what the document even
24 is.

02:54 25 THE WITNESS: Yes. That's correct.

1 BY MR. MEER:

2 Q And looking at this document, I know you said
3 earlier that you tried to be as accurate as possible and
4 that with human error no one could be accurate to every
02:55 5 minute every day. But as you look at this report, this
6 appears to be an accurate entry of the amount of time you
7 spent on the various work activities on each of the days
8 listed, right?

9 MR. BLACK: Objection. Misstates prior
02:55 10 testimony. It's compound and unintelligible.

11 THE WITNESS: I mean, it's never 100 percent
12 accurate considering it could be sometimes time-consuming
13 to just even be able to write down all of this
14 information and add up the minutes, and then if they
02:55 15 didn't add up to try to remember and figure out what you
16 did the previous day or couple of days or what have you.
17 So -- but -- and this was something that we entered into
18 the access system. But it's just -- I would say if it
19 was based on a percentage, maybe about 70 percent
02:56 20 accurate.

21 BY MR. MEER:

22 Q This is the most accurate record that you're
23 aware of showing the amount of time you spent during the
24 day on different work activities, right?

02:56 25 MR. BLACK: Objection. Misstates prior

1 testimony. It's leading. It's intentionally misleading.
2 And it's confusing and it assumes facts not in evidence.
3 Sorry.

4 THE WITNESS: I would say it would probably be
02:56 5 the closest thing to something being accurate as regards
6 to some type of record kept for what we did for
7 production throughout the day.

8 BY MR. MEER:

9 Q There's nothing that you can think of that would
02:56 10 make this more accurate, right? It's as accurate as you
11 could possibly make it?

12 MR. BLACK: Objection.

13 BY MR. MEER:

14 Q Right?

02:56 15 MR. BLACK: Objection. Vague and ambiguous.
16 It's confusing. It's misleading. The document speaks
17 for itself. Misstates prior testimony.

18 THE WITNESS: It just seemed like a really --
19 like I guess like an old-fashioned type of system. I
02:57 20 mean, something -- I mean, I've never used before. It
21 was just a very unique, old-fashioned thing, writing down
22 what you did throughout the day and trying to calculate
23 the minutes. But I can't -- I know one thing for sure.
24 It's never concrete and 100 percent accurate, but you --
02:57 25 it would give you a much better idea of what you did

1 respond to my attempting to clarify the record.

2 THE WITNESS: Yes. Yes. I understand that he's
3 talking about electronically to put it in the system
4 access.

02:58 5 MR. BLACK: Okay.

6 BY MR. MEER:

7 Q So if we were to find this handwritten journal,
8 the handwritten journal to your memory would include the
9 same amount of minutes that you entered electronically,
02:59 10 correct?

11 A I would say yes. Sometimes I had questions on
12 them myself because you could go a day or two, just get
13 caught up with doing -- doing your work and stuff because
14 this -- unfortunately with doing these reports, it
02:59 15 affected your time to process -- process claims and what
16 have you and other things that we were required to work
17 on. But this is the close -- the thing that comes the
18 closest to doing it and sometimes, you know, you can do
19 it every day or sometimes some people would do them
02:59 20 weekly and just copy and enter it into the system. Me
21 personally, I try to do it -- do it every -- every day or
22 at least every other day.

23 Q The Prudential policy was to do it every day,
24 correct?

03:00 25 A Yes. That's correct.

1 Q And there is no other set of records that you're
2 aware of that would have a more accurate representation
3 of the amount of time you spent on these various daily
4 activities, right?

03:00 5 A No, not that I know of.

6 Q And there is nothing in your memory that
7 indicates after reviewing this Exhibit 5 that the amount
8 of time entered is incorrect for any particular day?

9 MR. BLACK: Objection. The document lacks
03:00 10 foundation. It's vague and ambiguous.

11 THE WITNESS: I'm sorry. Can you repeat the
12 question again?

13 BY MR. MEER:

14 Q Sure. As you look at this document and it's got
03:01 15 an amount of time listed for every day, there aren't any
16 days that indicate to you "I know that doesn't seem
17 right, it says that I spent 62 minutes, an hour and
18 two minutes doing claims production on February 13th, and
19 I -- I recall that I must have spent nine hours doing
03:01 20 claims production that day." There's nothing about these
21 entries on Exhibit 5 that indicate to you it being
22 inaccuracy, right?

23 MR. BLACK: Objection. The question is
24 compound. There's at least three questions in there.

03:01 25 THE WITNESS: Not that I know of.

1 right?

2 MR. BLACK: Objection. Documents speaks for
3 themselves. The program speaks for itself. And it
4 misstates prior testimony. It is intentionally
03:08 5 misleading.

6 THE WITNESS: These reports were mainly just to
7 list the production of the work that was done for the
8 day.

9 BY MR. MEER:

03:08 10 Q Well, and they were also to list the amount of
11 time spent on each item so that the person's productivity
12 could be measured against what was actually produced that
13 day, correct?

14 MR. BLACK: Objection. It's leading. I'm not
03:08 15 even sure if that's a question.

16 BY MR. MEER:

17 Q Go ahead and answer.

18 A Yes. That's correct.

19 Q And so the amount of time actually spent on a
03:09 20 particular task was important to be recorded accurately
21 so that somebody's productivity could be assessed
22 accurately, right?

23 A Yes. That's the way they measured it there, so
24 yes.

03:09 25 Q And so this wasn't a system where someone was

1 just supposed to routinely record seven hours a day, they
2 were supposed to record the actual amount of time spent,
3 right?

4 MR. BLACK: Objection. Vague and ambiguous as
03:09 5 to "time spent." Asked and answered and misstates prior
6 testimony.

7 THE WITNESS: Yes. That's correct.

8 BY MR. MEER:

9 Q And when you look at all of these dates on the
03:09 10 daily production report, are there any dates where you
11 can remember spending more time than the amount recorded
12 on the daily production report?

13 A No.

14 MR. BLACK: Objection -- I'm sorry. Objection.
03:09 15 Vague and ambiguous as to spent time. And vague and
16 ambiguous in general.

17 THE WITNESS: No. I wouldn't be able to go
18 ahead and say on a specific date what I was doing and
19 what have you that sticks out in my mind.

03:10 20 BY MR. MEER:

21 Q On the dates when you were working beyond the
22 seven hours of time recorded on the production report,
23 what is the highest amount of time you worked without
24 recording it?

03:10 25 MR. BLACK: Objection. Vague and ambiguous as

1 BY MR. MEER:

2 Q And so if in a worst case scenario you were
3 required to work an extra 20 minutes per day without
4 getting compensated for it in any way, that would be
03:14 5 100 minutes per week, right?

6 MR. BLACK: Objection.

7 BY MR. MEER:

8 Q 20 times 5.

9 MR. BLACK: Objection. It's compound. It's a
03:14 10 rambling question. It's unintelligible. It's unclear
11 whether counsel is asking whether the minutes are
12 included from the morning and the afternoon.

13 BY MR. MEER:

14 Q Go ahead and answer.

03:15 15 A Okay. Well, it wouldn't be every day, but I
16 mean that I stayed, I mean, 15, 20 minutes later. But, I
17 mean, on average, I left anywhere from 4:07 to 4:15 each
18 day.

19 Q And so on staying late, if we took the worst
03:15 20 case scenario -- the time when you worked the most and
21 were compensated the least -- it would be 15 minutes
22 five days a week, right?

23 MR. BLACK: Objection. Vague and ambiguous and
24 unintelligible.

03:15 25 Only answer if you understand the question.

1 THE WITNESS: I can't answer that.

2 BY MR. MEER:

3 Q Okay. Let me break it down.

4 A Okay.

03:15 5 Q Your lawsuit is for time that you say you worked
6 when you weren't paid. And so my question -- and it's
7 not meant to be tricky and it's not meant to be complex.
8 I'm trying to figure out how much time you worked without
9 being paid. So I want to try and ask that on a daily
03:16 10 basis or a weekly basis.

11 So on the worst day you worked 20 minutes of
12 time without being paid, right?

13 MR. BLACK: I'm going to object. It's vague and
14 ambiguous as to how that 20 minutes is calculated. If
03:16 15 you can just clarify for the record.

16 BY MR. MEER:

17 Q Using a watch that has a minute hand and a
18 second hand calculating the amount of time on that watch
19 that is accurate and it's a watch you own, how much extra
03:16 20 time did you work on the worst day?

21 A On the worst day? I would say it could be up to
22 like 13, 15 minutes.

23 Q Okay. And if this was the worst case scenario
24 week -- let's say 15 minutes of extra time worked each
03:17 25 day without being paid -- that would be 15 minutes times

1 five days a week, right?

2 A Yes.

3 Q You never had to work weekends, right?

4 A No, I didn't have to work weekends.

03:17 5 Q You were always on a five-day week?

6 A Yes. That's correct.

7 Q So 15 minutes extra per day times five days a
8 week would be one hour and a half, right?

9 A Yes.

03:17 10 Q No.

11 A An hour and a half, 15 minutes?

12 Q Monday, 15 minutes; Tuesday --

13 A An hour.

14 Q -- 30 minutes; Wednesday, 45 minutes; Thursday,
03:17 15 1 hour; Friday, 1 hour and 15 minutes.

16 A Okay.

17 Q It is a complex question, I guess. So you were
18 working the worst amount of uncompensated time every day
19 of the workweek, that would be 15 minutes per day or
03:18 20 1 hour and 15 minutes per week, right?

21 A Yes, roughly about that.

22 Q Okay. And your rate of compensation per hour
23 was \$19.87, right?

24 A Something -- I think it was like 19.50 or
03:18 25 something, but you're close.

1 Q Let's say your rate of compensation was always
2 at \$19 an hour or 19.50 per hour -- between those two,
3 right?

4 A Yes.

03:18 5 Q And so that was your rate throughout your
6 employment. It never went up, never went down?

7 A That's correct.

8 Q And on your paychecks, you got paid every two
9 weeks, correct?

03:19 10 A Yes. That's correct.

11 Q And so you automatically got paid for 37 1/2
12 hours per week, right?

13 A Yes.

14 Q And so if you had worked those extra 15 minutes
03:19 15 five days instead of getting paid for 37 1/2 hours, it
16 should be 38 hours and 45 minutes, right?

17 A I'm sorry. You're talking about the extra time
18 added on --

19 Q Yes.

03:19 20 A -- that I stayed there?

21 MR. BLACK: I'm just going to object that the
22 math is correct.

23 BY MR. MEER:

24 Q Well, we can -- let's do it the hard way. This
03:19 25 is like why my mother would want me to go to medical

1 school instead of law school, but this is -- if there's
2 37 1/2 hours per week, that's what you recall from your
3 paychecks, right?

4 A Yes.

03:20 5 Q And we just did the math for 15 minutes times
6 five days is an hour and 15 minutes.

7 A Yes.

8 Q Okay. So 37 1/2 -- we add the hour. That's 38.
9 And then we add the extra 15 minutes. That makes it 38
03:20 10 hours and 45 minutes.

11 A Yes.

12 Q So instead of being paid 37 1/2 hours per week
13 on the worst weeks when you were working the most time
14 without being paid, you should have been paid 38 hours
03:20 15 and 45 minutes per week?

16 A Yes. That's correct.

17 Q And your paychecks were every two weeks. So you
18 got paid for 75 hours regularly every two weeks, right?

19 A That's right.

03:21 20 Q The 37 1/2 plus 37 1/2 is 75?

21 A Yes. That's correct.

22 MR. MEER: Let's mark as Exhibit 6 a document
23 referred to as "Monthly Performance Reports."

24 (Deposition Exhibit 6 was marked for
03:21 25 identification by the court reporter.)

1 this is -- like my home computer, for example, that --
2 what you're saying would definitely merit that. But with
3 regards to at the office, at Prudential, I knew what
4 systems were the fast ones and which ones were slow and
04:02 5 it didn't really matter the order.

6 BY MR. MEER:

7 Q Okay. The Lotus Notes system -- how long did
8 that take to get up and running?

9 A It didn't take that long once I figured out what
04:03 10 the password was. It was one of those easy passwords
11 like you could have synchronized with other passwords so
12 it wasn't something that -- if I remembered it right
13 away, then I could get in right away.

14 Q Less than five seconds, less than ten seconds?

04:03 15 A I would say probably like two minutes.

16 Q And if you remembered the password, it would be
17 less than two minutes?

18 MR. BLACK: Objection. Asked and answered.

19 THE WITNESS: I would say it could -- it would
04:03 20 take -- I mean, that's with knowing the password. Up to
21 two minutes for everything to load into the system.

22 BY MR. MEER:

23 Q And the telephone queue -- how long did it take
24 to load into that assuming no human error, that you
04:04 25 remembered the password, that you were able to type at a

1 regular speed, all of that?

2 A It probably took about 15, 20 seconds. It
3 didn't take that long.

4 Q And the ABC system -- how long did that take to
04:04 5 logon to?

6 A Probably like a minute, minute and a half.

7 Q The CFE system -- how long did that take to
8 logon to?

9 A That could take a little bit longer. It could
04:04 10 take maybe about two to three minutes.

11 Q And the Pride system -- how long did that take
12 to logon to?

13 A That could take some time. It could take
14 five minutes, sometimes seven minutes. It took a long
04:05 15 time.

16 Q And what percentage of the time in the morning
17 did you have to logon to the Pride system?

18 A I would say probably maybe a good 30, 40
19 percent.

04:05 20 Q So the majority of the time you didn't need to
21 logon to the Pride system for the beginning of the shift?

22 A No. No.

23 Q And that statement is correct?

24 A Yes.

04:05 25 Q And so at the beginning of the shift, the

1 majority of the time you had to logon to Lotus Notes?

2 A I would say yes, I always logged in to Lotus
3 Notes. That was just something, yes.

4 Q And the beginning of the shift, if you were on
04:06 5 telephones, you had to logon to the telephone queue IP
6 Agent?

7 A Yes. That's correct.

8 Q And the beginning of the shift, if you were on
9 phones, what percentage of the time did you have to be
04:06 10 logged on to the ABC system?

11 A 100 percent.

12 Q And the beginning of the shift, what percentage
13 of the time did you have to logon to the CFE system if
14 you were on the phones?

04:06 15 A 100 percent.

16 Q So on the dates when you had to begin your shift
17 on telephones, the majority of the time it was Lotus
18 Notes which could take up to two minutes, the telephone
19 queue IP Agent which would take 15 or 20 seconds, the ABC
04:06 20 system which could take a minute to a minute and a half,
21 and the CFE system which could take two to three minutes;
22 is that right?

23 A Yes. That's right, yes, to get all of these
24 systems up, yes.

04:07 25 Q And you didn't have to wait for one program to

1 evidence.

2 THE WITNESS: No. I just don't ever personally
3 remember getting on the computer and being able to have
4 all my systems up in four minutes.

04:15 5 BY MR. MEER:

6 Q And so in order to be considered logged on by
7 8:00 a.m., you might still be logging on to programs
8 after 8:00 a.m., right?

9 MR. BLACK: Objection. Vague and ambiguous as
04:16 10 to what "logged on" means.

11 THE WITNESS: Yes. That's correct.

12 BY MR. MEER:

13 Q And you were paid for that time because it was
14 after 8:00 a.m., right?

04:16 15 A Yes. I was paid once -- at 8:00 a.m. at my
16 original shift. I wasn't paid for the time prior to
17 that.

18 Q So if you got into the office at 7:58 a.m. and
19 you were up and running on Internet Explorer by 8:02
04:16 20 a.m., then you were already being paid as of 8:00 a.m. to
21 logon to the other programs, right?

22 MR. BLACK: Objection. The question is
23 compound. Assumes facts not in evidence. It's vague and
24 ambiguous.

04:16 25 THE WITNESS: I was just strictly paid from

1 8:00 a.m. I wasn't paid for coming in early to start my
2 systems and get them running earlier.

3 BY MR. MEER:

4 Q You never had an occasion that you can recall
04:17 5 where all of your systems were up and running by
6 8:00 a.m., right?

7 MR. BLACK: Objection. It's vague and ambiguous
8 by all systems "up and running."

9 THE WITNESS: The only way that would be
04:17 10 possible is if you forgot to turn your computer off the
11 night before and your systems were all up the following
12 day. You just turned it -- you turned -- you just -- I
13 mean, you not even turn anything. You use the mouse and
14 it came up and you put your password to login. That
04:17 15 would be the only way realistically that would be up.
16 But that was not what Prudential's policy was. They
17 wanted us to go ahead and turn them off each night. But
18 every now and then you might have where you thought you
19 turned it off and you didn't and you just forgot or what
04:18 20 have you.

21 Q But if somebody was following the policy
22 articulated at the call center where you worked, they
23 could have logged on to just one of those systems by
24 8:00 a.m. and then logon to the other systems after
04:18 25 8:00 a.m., right?

1 MR. BLACK: Objection. The question is vague
2 and ambiguous. It's compound and it's intentionally
3 misleading.

4 THE WITNESS: Yes. That's true.

04:18 5 BY MR. MEER:

6 Q And so if it took 15 to 20 seconds to logon to
7 IP Agent, somebody could show up 15 to 20 seconds before
8 8:00 and be up and running on IP Agent by 8:00, right?

9 MR. BLACK: Objection. "Up and running" is
04:18 10 vague and ambiguous and it misstates prior testimony.

11 THE WITNESS: They could be logged in to the
12 system earlier, but it doesn't necessarily mean they were
13 getting phone calls.

14 BY MR. MEER:

04:19 15 Q But if somebody needed to be logged on to any
16 one of the programs at 8:00, they could -- since you
17 mentioned that IP Agent, the telephone queue was the
18 shortest -- 15 to 20 seconds -- if they arrived 30
19 seconds before 8:00, then they could be logged on to the
04:19 20 telephone queue by 8:00?

21 MR. BLACK: Objection. The question assumes
22 facts not in evidence. Lacks foundation. And it
23 misstates prior testimony.

24 THE WITNESS: I'm sorry. Could you repeat it
04:19 25 again?

1 BY MR. MEER:

2 Q Sure. If the telephone queue took 15 to 20
3 seconds to logon to, then if somebody arrived 30 seconds
4 before 8:00 a.m., they could be logged on to the
04:19 5 telephone queue at 8:00 a.m.?

6 A Yes.

7 MR. BLACK: Same objections.

8 THE WITNESS: Yes. They could be logged into
9 the phone system, but you would still have to be, you
04:20 10 know -- it still would definitely take time for you to
11 login to your computer systems.

12 BY MR. MEER:

13 Q And you could login to those other computer
14 systems after 8:00 a.m., right?

04:20 15 A Yes. You could go ahead and do that.

16 Q And you were counseled a few times for not
17 turning off or not logging out of your computer in the
18 evening, correct?

19 A Yes. That's correct.

04:20 20 Q Now, in order to avoid having telephone calls go
21 beyond your shift, you could logout of the telephone
22 queue before 4:00 p.m., correct?

23 A Well, normally, if you were on a phone call, I
24 mean, it just -- it just really depends. I mean, if you
04:20 25 had a phone call that was at 3:57, you knew realistically

1 that call was going to go over your shift. You had to
2 take the phone call. You can't tell the participant "I
3 have to leave in three minutes, I'll call you back the
4 next day." You had to take the phone call even if it
04:21 5 went past your shift. But we were still required to --
6 to just stay on the phone until 4:00. I mean, I remember
7 there were times where I was thinking I wasn't going to
8 get a phone call past 4:00 and I did. I'm still
9 through -- through the phone system and I still had to
04:21 10 help the participant.

11 Q But if you could logout of the systems in
12 whatever sequence or order you wanted to -- if you wanted
13 to avoid calls that went after 4:00, the first thing you
14 would logout of would be IP Agent because once you're out
04:21 15 of that you're out of the call queue, right?

16 MR. BLACK: Objection. Assumes facts not in
17 evidence. Incomplete hypothetical. Calls for
18 speculation and is misleading.

19 THE WITNESS: You could basically -- you
04:22 20 wouldn't even necessarily have to logout. You can stay
21 into -- I forget what it was called there. It might have
22 been like "not ready" or "wrap up" or something like that
23 to where you could still be in the system but where you
24 block from not getting anymore phone calls while you're
04:22 25 wrapping up your work.

1 THE WITNESS: I would say -- it could have taken
2 over five minutes. Because it seems like 4:07 was --
3 always seemed like my target number to where I was just
4 like okay, I've been here for seven minutes past my
04:26 5 shift, I'm not getting paid and no one is really
6 concerned about paying me for fighting with this
7 computer. So I'm like -- I have to go because I would
8 have to go pick up my children.

9 BY MR. MEER:

04:26 10 Q I'm just trying to get an amount of time.

11 A Yes.

12 Q I'll ask you about --

13 MR. BLACK: She's giving it to you.

14 BY MR. MEER:

04:26 15 Q So on the longest amount of time, it was seven
16 minutes?

17 MR. BLACK: Objection. Misstates prior
18 testimony. Lacks foundation and is misleading.

19 THE WITNESS: It was an average of seven
04:26 20 minutes.

21 BY MR. MEER:

22 Q And on days when it didn't freeze and things
23 logged out correctly, it could be done in less than two
24 minutes?

04:26 25 MR. BLACK: Objection. Misstates prior

1 testimony.

2 THE WITNESS: I would say within three minutes.

3 BY MR. MEER:

4 Q These problems that you had logging out, they
04:27 5 were specific to the computer assigned to you? It wasn't
6 everyone at the call center, right?

7 A Yes. That's correct.

8 Q And so the other people around you were able to
9 logon and logoff much quicker than you were?

04:27 10 MR. BLACK: Objection. Assumes facts not in
11 evidence.

12 THE WITNESS: That I have no idea. I just know
13 at the end of the day what my main focus was. I wasn't
14 observing how everyone else was getting out of their
04:27 15 computer. I just know I was having problems with mine
16 and I addressed it to my supervisors multiple times and
17 it just always seemed to be an ongoing issue.

18 BY MR. MEER:

19 Q You went to the gym sometimes with P.J., right?

04:27 20 A Yes.

21 Q And on those days, she was able to logout of her
22 computer more quickly than you were, right?

23 A Well, I didn't ask her directly if she had
24 problems logging out of her computer or what have you. I
04:28 25 just know that it was just an ongoing frustration with my

1 something. I don't remember him saying "Okay, let's
2 everybody -- let's go home." That I just --

3 Q On days where you were not on a call, you could
4 start logging out at 3:50 p.m., right?

04:30 5 A Yeah. I mean, we still -- we had to go ahead
6 and, you know, finish our work or, you know, pretty much
7 just get any paperwork we had organized, put back in our
8 desk or what have you, start logging out of your systems
9 if we didn't have a phone call or whatever. But
04:31 10 Prudential always made sure they could squeeze every
11 minute out of you.

12 Q But you said there were some days when people
13 from quality review asked you a question or some days
14 when you got a late call just toward the end of the
04:31 15 shift. But on the other days when you had no one asking
16 you questions and no one on the phone, you could start
17 logging out at ten minutes of 4:00, right?

18 MR. BLACK: Objection. Assumes facts not in
19 evidence. Misstates prior testimony. Misleading and
04:31 20 leading.

21 THE WITNESS: It was very rare. It would have
22 been something I might have decided to do if I had an
23 obligation to where I had an appointment where I needed
24 to just be really leaving or to make sure I got out of
04:32 25 there on time. But it definitely was not on a regular

1 BY MR. MEER:

2 Q This Exhibit 7 also discusses that your quality
3 percentage was below acceptable. You were counseled
4 about that, correct?

04:53 5 MR. BLACK: Objection. Vague as to time, date.

6 THE WITNESS: Yes. We were always -- it seemed
7 like every single week was a week of being counseled
8 about production.

9 BY MR. MEER:

04:53 10 Q Well, your production and your quality were the
11 lowest of everyone at the call center, right?

12 MR. BLACK: Objection. Assumes facts not in
13 evidence. Lacks foundation. It's argumentative.

14 THE WITNESS: That I -- that I have no idea on.

04:54 15 MR. MEER: Let's mark as Exhibit 8 copies of
16 your pay stubs.

17 (Deposition Exhibit 8 was marked for
18 identification by the court reporter.)

19 BY MR. MEER:

04:54 20 Q Have you seen these pay stubs prior to today?

21 A Yes.

22 Q And just to get an accurate pay rate on there,
23 on page 2 of this, it indicates that you had a pay rate
24 of \$19.48. Is that accurate?

04:55 25 A Yes. It looks like it's 48. It looks like 49

Exhibit A, Page 54

1 on one of them, but it's a penny.

2 Q And when you were paid every two weeks, were you
3 paid electronically or did you get a check?

4 A I do remember the first check came in the mail
04:55 5 and it was for paid -- I was paid for one week and then
6 after that I started getting direct deposit
7 electronically.

8 Q And when you got direct deposit electronic
9 payment, did you receive a copy of those pay stubs?

04:55 10 A You would have -- well, for the first initial
11 paycheck when I started, the one that was mailed to my
12 home. It had a paycheck stub. But in the future, you
13 would have to pretty much login to the system if you
14 wanted to go and -- to review your paycheck stubs. So it
04:56 15 wasn't necessarily something I did all the time,
16 investigate because the pay was pretty much the same.

17 Q But you knew how to login to the system at
18 Prudential in order to pull up a copy of your electronic
19 pay stub, correct?

04:56 20 A Yes. That's correct.

21 Q And what was the system called that you logged
22 in to in order to see your pay?

23 A I'm thinking -- I want to say it might have been
24 Self Service.

04:56 25 MR. BLACK: Only answer if you know. Don't

1 would have to stay past my shift to make up the time. I
2 never was -- never was I just given something for free in
3 regards to saying oh, I come -- I'm a half an hour or
4 hour late to work and pretend that I wasn't there. I had
04:59 5 to make up that time.

6 MR. BLACK: Dominique, just make sure you answer
7 his questions specifically.

8 BY MR. MEER:

9 Q On the dates when you were three minutes or five
04:59 10 minutes or ten minutes late, you never told any
11 supervisor or manager to adjust your time, right?

12 MR. BLACK: Objection. Intentionally
13 misleading. Lacks foundation. It's argumentative.
14 Assumes facts not in evidence and is intended to
05:00 15 intimidate the witness.

16 THE WITNESS: No, I didn't ask anyone.

17 BY MR. MEER:

18 Q So you got that extra time without having to
19 make it up at some other point during the shift, right?

05:00 20 A Those were --

21 MR. BLACK: Objection. Vague and ambiguous as
22 to "extra time." The whole question is vague and
23 ambiguous and irrelevant.

24 THE WITNESS: Those were not my intentions. My
05:00 25 intentions was just to do my work and then be able to go

1 A Yes, I'm sure it did.

2 MR. BLACK: Dominique, you need to only answer
3 if you know. Don't speculate, don't guess. Don't say
4 "I'm sure it did." Did it or not? If you don't know,
05:12 5 say you don't know.

6 THE WITNESS: I would say yes.

7 MR. MEER: Didn't work. Okay.

8 MR. BLACK: Do you understand what I'm asking?

9 THE WITNESS: Yes. I completely understand,
05:13 10 yes.

11 MR. BLACK: All right.

12 THE WITNESS: Yes, they do.

13 BY MR. MEER:

14 Q And the Prudential electronic intranet system
05:13 15 also had a section on payroll and overtime, correct?

16 A I'm sure it did. I didn't review it, though.

17 MR. BLACK: Dominique, look. This is very
18 important.

19 THE WITNESS: Okay.

05:13 20 MR. BLACK: Do not guess to his questions. It
21 does sound like the way you're answering the questions
22 that you are guessing.

23 THE WITNESS: Okay. It's just been a really
24 long time and so --

05:13 25 MR. BLACK: If you know, then you can answer the

1 Q That was not a guess. You are sure that there
2 was a policy regarding payroll and timekeeping, right?

3 A Yes.

4 Q And there were also policies regarding non-
05:14 5 discrimination and harassment and other HR issues, right?

6 A Yes.

7 Q And in connection with your performance
8 evaluations, you reviewed the company intranet policies
9 regarding performance standards, right?

05:14 10 A I mainly focused on the ones that we were
11 required to do. Like we had one, for example, on like
12 ethics where it asks you a little quiz at the end and
13 things like that. I don't recall doing one for -- for
14 payroll and overtime, something to review. That's
05:15 15 probably -- would have been the time I would have taken
16 the opportunity to review those in thorough detail.

17 Q Did you have an understanding -- and I'm not
18 asking as a lawyer -- but did you have an understanding
19 as an employee as to the difference between overtime pay
05:15 20 and straight-time pay?

21 MR. BLACK: Objection. Calls for a legal
22 conclusion.

23 THE WITNESS: I don't remember asking.

24 BY MR. MEER:

05:15 25 Q From just your knowledge of prior jobs, did you

1 have an understanding that someone could have a regular
2 or straight-time pay rate and then an overtime pay rate?

3 MR. BLACK: Objection. Asked and answered.
4 Calls for a legal opinion.

05:15 5 THE WITNESS: I would say yes, but this job was
6 completely different as regards to recording time
7 considering we didn't do it ourselves. I always have had
8 a place where I was able to take liberty of entering my
9 own time.

05:16 10 BY MR. MEER:

11 Q And you understood -- again, not as a lawyer --
12 but just from your prior experience that overtime applied
13 to work over 40 hours a week, right?

14 MR. BLACK: Objection. Calls for a legal
05:16 15 conclusion. Asked and answered.

16 THE WITNESS: Well, I know it can also be -- I
17 believe in the state of California, even if you work over
18 eight hours a day -- but since I didn't work over eight
19 hours a day, I guess it was for unpaid time. But I
05:16 20 didn't know how that worked and no one ever clarified
21 that with me at Prudential.

22 BY MR. MEER:

23 Q But based on your understanding that overtime
24 was over 40 hours a week, there were not weeks at
05:17 25 Prudential when you worked over 40 hours, correct?

1 MR. BLACK: Objection. Calls for a legal and
2 expert opinion. Assumes facts not in evidence.
3 Misstates prior testimony.

4 THE WITNESS: No, I didn't work over 40 hours a
05:17 5 week at Prudential.

6 BY MR. MEER:

7 Q And you didn't work over eight hours a day at
8 Prudential either, right?

9 MR. BLACK: Objection. Vague and ambiguous as
05:17 10 to work overtime at Prudential.

11 THE WITNESS: The only way I would have stayed
12 over eight hours is if I had to make up an hour and maybe
13 at the end of the shift I might have got out of there,
14 for example, at 5:07.

05:17 15 BY MR. MEER:

16 Q Okay.

17 A And so that happened on occasion.

18 Q More than two or three times?

19 A Gosh. I really can't answer. But I want to say
05:18 20 more than two or three times.

21 Q More than six times?

22 A I couldn't put a number on it, but I want to say
23 more than two or three. Maybe roughly around five, but
24 that's not -- but that's only me guessing and we're
05:18 25 talking about going a year to two years back.

1 with and they still didn't even want you to do that. It
2 was just --

3 Q But you ultimately were successful when you had
4 questions that couldn't be answered by people who called
05:26 5 the call center or questions about how to handle claims?
6 You were able to navigate through Prudential in order to
7 find somebody who could help you, right?

8 MR. BLACK: Objection. Irrelevant.

9 THE WITNESS: I could, but it wasn't enjoyable
05:27 10 sometimes.

11 BY MR. MEER:

12 Q Okay. I'll stipulate that I've taken 1,000
13 depositions and I haven't yet heard a person say that
14 their job was enjoyable or without stress. And so I -- I
05:27 15 get that.

16 But you understood at Prudential that if you had
17 wanted to try to navigate to find out who the appropriate
18 person is for payroll issues or human resources issues,
19 there were resources to find those people, right?

05:27 20 MR. BLACK: Objection. Asked and answered.
21 It's argumentative. Federal law controls.

22 THE WITNESS: It's just something to where I --
23 I didn't want to be, I guess, going behind someone's back
24 or questioning somebody's authority, considering
05:27 25 everything that we were going through on a day-to-day

1 basis. So it was just something that I just -- I just
2 left alone even though I saw that it wasn't right.

3 BY MR. MEER:

4 Q But you understood Prudential was a -- a multi-
05:28 5 billion dollar Fortune 500 company, right?

6 A I never looked at it that way.

7 Q You thought of it as a big place, you had said
8 that you worked at 21st Century Insurance, you knew
9 Prudential was a big corporate employer, right?

05:28 10 A Yes, I knew that it was, but it was -- the way
11 it was set up was completely different compared to me
12 being at 21st Century. I mean, we had a doctor on-site
13 if you got hurt. We had everything there versus at
14 Prudential -- we didn't have those things.

05:28 15 Q Well -- but you didn't think that Charlene Frank
16 was the only person in human resources at this enormous
17 company who would be able to respond to questions about
18 your pay or how to record time, right?

19 MR. BLACK: Objection. Compound.

05:29 20 THE WITNESS: I really didn't -- you know,
21 really know, you know, as regards to her. It wasn't like
22 I knew about her from day one. And that's normally when
23 you're concerned about your pay and what have you. And I
24 didn't learn about -- you get introduced to her, I say,
05:29 25 maybe a few months down the line.

1 BY MR. MEER:

2 Q Well, either somebody said, "Ms. Osborne, you'll
3 be able to earn incentive payments" or they didn't say
4 it.

06:34 5 MR. BLACK: Same objections.

6 Only answer if you know. Don't speculate.

7 THE WITNESS: I really don't know.

8 BY MR. MEER:

9 Q As far as you understood, your productivity
06:34 10 targets would not have any impact on your daily or weekly
11 compensation, right?

12 MR. BLACK: Objection. Vague and ambiguous as
13 to "daily or weekly targets." Vague and ambiguous as
14 to -- strike that.

06:35 15 THE WITNESS: I'm sorry.

16 MR. BLACK: Answer if you can.

17 THE WITNESS: I'm sorry. Can you ask the
18 question?

19 BY MR. MEER:

06:35 20 Q You were paid the same amount of money no matter
21 how many calls you handled or how many claims you
22 processed, right?

23 A Yes. Yes. That's correct.

24 Q Some call centers have an incentive program
06:35 25 where they pay an employee per call. The employee gets a

1 base wage and then maybe a dollar or a couple of dollars
2 for each call that they complete. There wasn't any
3 program like that in effect at Prudential to your
4 knowledge, right?

06:35 5 MR. BLACK: Objection. Vague and ambiguous as
6 to "incentive payments" as characterized by counsel.
7 Vague as to time. Overbroad.

8 THE WITNESS: I don't know about anywhere else.
9 I just know here in the Agoura Hills office that was not
06:35 10 something offered to us.

11 BY MR. MEER:

12 Q Your pay, from what you were told, was not
13 dependent on the number of calls you handled or the
14 number of claims you handled, right?

06:36 15 A Yes. That's correct.

16 Q And as far as you know, there was no program in
17 effect at Prudential to pay employees based on the number
18 of calls they handled or the number of claims they
19 handled, right?

06:36 20 A I'm sorry. Can you ask me that again?

21 Q There was no program at any facility that you're
22 aware of that paid based on the number of calls handled
23 or the number of claims handled, right?

24 A I can only answer for the office that I worked
06:36 25 in. I don't know about the other offices. But no, we

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I, DOMINIQUE OSBORNE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____,
20____, at _____, _____.
(City) (State)

DOMINIQUE OSBORNE

1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a Federal Case,
15 before completion of the proceedings, review of the
16 transcript [X] was [] was not required.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of
19 any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this day subscribed
21 my name.

22 Dated: July 8, 2010

23
24 

ANDREA M. RINKER
CSR No. 13437

